

In the Matter of Merchant Mariner's Document No. Z-753832-D1 and
all Other Seaman Documents

Issued to: JOSEPH ROSNER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1092

JOSEPH ROSNER

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.11-1.

By order dated 20 November 1958, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation". The specification alleges that on or about 2 October 1958, Appellant was convicted by the United States District Court for the Southern District of New York, a court of record, for a violation of the narcotic drug laws of the United States.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of guilty to the charge and specification.

The Investigating Officer made his opening statement. Appellant then made a statement under oath that his conviction was based on his possession of 19 grains of untaxed heroin, on 23 April 1958 which he had purchased in New York City for his personal use; he had been using heroin "off and on" for about five years but is now rehabilitated and completely cured; he was not an addict except for a few weeks in 1955 after which he was hospitalized at Lexington, Kentucky; Appellant has not used narcotic drugs since the time of his arrest six months ago and he will never use drugs again. In view of this statement that the conviction was, in effect, due to Appellant's use of narcotics and also because of his claim of cure, the Examiner changed the plea to not guilty on the theory that Appellant should not be given the opportunity to establish a defense of rehabilitation as indicated in Commandant's Appeal Decision No. 1037.

The Investigating Officer introduced in evidence a certified

copy of the record of conviction as alleged in the specification. Appellant adopted his prior sworn statement as his testimony in evidence and submitted two letters concerning Appellant's apparently determined efforts to rehabilitate himself and the absence of any indication that Appellant was using drugs. Both parties then rested.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard and both parties were given opportunity to submit proposed findings and conclusions. The Examiner found that Appellant had not sustained the burden of establishing the defense of rehabilitation. The Examiner reasoned that although the gravamen of the case was the fact that Appellant was a user of narcotics, six months without drugs was too short a period of time to show complete cure after admitted use for five years and that Appellant's resumption of the use of narcotics after his hospitalization in 1955 detracted from the value of his present evidence of rehabilitation. Consequently, the Examiner entered an order revoking all documents issued to the Appellant.

FINDINGS OF FACT

On 2 October 1958, Appellant was convicted on his plea of guilty, by the United States District Court for the Southern District of New York, a court of record, for unlawfully, wilfully and knowingly purchasing, possessing, dispensing and distributing heroin not in, or from, the original stamped package. (26 U.S.C. 4701, 4703, 4704(a), 4771(a) and 7237(a)). Appellant was sentenced to two years and then placed a probation for two years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he was guilty only of possession and use of heroin but that he is now cured of the habit. Appellant needs his document to go to sea in order to earn a living as a messman in which capacity he would not be required to perform any duties which could constitute a hazard to his shipmates. Therefore, Appellant requests that the appeal for the return of his document be granted.

OPINION

Appellant's contentions are considered to be without merit not only for the reasons stated by the Examiner but, primarily, because of the nature of the District Court conviction.

Appellant was convicted, on his plea of guilty, to the charge of purchasing, possessing, dispensing and distributing heroin.

Commandant's Appeal Decision No. 1037 remanded a case based on a State court conviction for use of a narcotic drug because the examiner had allowed the seaman's plea of guilty to stand, after production of a Public Health Service certificate indicating the seaman's fitness for duty, rather than to change the plea and admit evidence of cure by the seaman. But the latter case has no application herein because the present Appellant was not convicted merely for the use of heroin. If the conviction is for possession, or anything else other than use or addiction, the examiner definitely should not change a plea to not guilty unless the seaman raises some question as to the adequacy of the record of conviction. Appellant did not question the record of conviction in any respect. The defense of cure should not be considered as relevant unless the conviction is for use or addiction to narcotics. These are limitations with respects to the intended applications of Appeal No. 1037. Therefore, the Examiner should not have rejected Appellant's plea of guilty despite his sworn statement indicating his use of narcotics and subsequent cure.

I agree with the Examiner that the return to sea of a person convicted of narcotics offense would constitute an unwarranted, potential danger to the safety of his shipmates and ship, regardless of the capacity in which he served, and that merchant vessels of the United States are not suitable for the rehabilitation of such narcotics offenders.

Finally, Appellant's contentions have no bearing on the outcome of this administrative proceeding because 46 U.S.C. 239(b) (1) requires the revocation of a seaman's document upon proof of his conviction by a court of record for violation of a narcotic drug law of the United States as set forth in the above findings of fact. Hence, this conviction is conclusive for the purpose of this proceeding.

ORDER

The order of the Examiner dated at New York, New York, on 20 November 1958, is AFFIRMED.

A.C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 24th day of March, 1959.